IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.1411 OF 1990

WITH

FIRST APPEAL No 4 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LAND ACQUISITION OFFICER

Versus

KANTILAL MULJIBHAI SHAH

Appearance:

1. First Appeal No.1411 of 1990
MR SHIRISH JOSHI for the appellant
Mr. B.Y. Mankad, Assistant Government Pleader
for Respondent No. 1

2. First Appeal No. 4 of 1991
Mr. B.Y. Mankad, Assistant Government Pleader
for the appellant
MR Baiju Joshi with Mr. SHIRISH JOSHI for
Respondent No. 1-4
MR SK JHAVERI for Respondent No. 5

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 29/04/2002

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellants, who are original claimants, have filed First Appeal No.1411 of 1990 under Section 54 of the Land Acquisition Act, 1894 (to be referred to as "Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, for enhancement of compensation by challenging the judgment and award dated April 6, 1988 passed by the learned District Judge, Surat, in Land Acquisition Case No.10 of 1993, whereas the appellant [Land Acquisition Officer] of First Appeal No.4 of 1991 has questioned the correctness of the judgment and award dated April 6, 1988 passed by the learned District Judge, Surat, in Land Acquisition Case No.10 of 1993, in determining the market value of the acquired lands.

2. As both the appeals arise out of the one and same judgment and award, and as common questions of fact and law are involved in both these appeals, they are disposed of by this common judgment.

3. The lands bearing Nondh Nos. 9 to 15 situated in Ward No.7 of Surat City, were placed under acquisition by issuance of notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short), published in the Government Gazette on October 1,1964. After the usual procedure, the declaration under Section 6 of the Act was published in the Government Gazette on February 17, 1966. Except the land bearing Survey No.14, other lands were of the ownership of the Government and the claimants were granted a lease of 99 years by the Government with the permission to construct over the said leased lands. Notices under Section 9 of the Act were served on the persons interested. The claimants preferred their claim before the Land Acquisition Officer and claimed total compensation of Rs.3,38,622/- for the land; Rs.66,130/for the super-structure; and Rs.60,705 as solatium. The Land Acquisition Officer, on the basis of the materials placed before him, made his award on November 11, 1982 and offered compensation of Rs.28,587/- for the super-structure, Rs.4288/- solatium at 15%, less the amount of Rs.2858/- being the expenses for demolition. The Land Acquisition Officer did not offer any compensation for the lands under acquisition.

4. The claimants, dissatisfied with the award of the Land Acquisition Officer, filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer their application to the District Court, for determination of the compensation for the acquired lands.

Accordingly, reference was made to the District Court, Surat, which was numbered as Land Reference Case No. 10 of 1993. Before the Reference Court, the claimants had claimed compensation of the acquired lands admeasuring 672 sq.yards at the rate of Rs.600/- per sq.yard; the claimants also claimed compensation of Rs.66,130/- for the super-structure and solatium.

5. The application of the claimants was opposed by the referer by filing written statement Exh.8, inter alia, contending that the Land Acquisition Officer had awarded the compensation of the acquired lands to the maximum extent possible. It was further contended that the claimants, being the lessee of the acquired lands, had no interest in the acquired lands and, therefore, the Land Acquisition Officer was justified in not awarding any compensation for the acquired lands. It was further contended that the lease granted in favour of the claimants had expired on July 31, 1966 and the claimants had not exercised the option for the renewal of the lease. It was prayed that the claimants were not entitled to claim any compensation for the acquired lands and the reference be dismissed.

6. On the basis of the rival contentions of the parties, the Reference Court framed issues at Exh.9. On behalf of the claimants, (1) Kantilal Muljibhai, who was one of the claimants, was examined at Exh.12; (2) Suresh Chandra Bhagwatishanker Joshi, Architect-cum-Engineer, was examined at Exh.40; (3) witness Navinchandra Jayantilal Sheth, who was the purchaser of the land bearing Nondh No.4940 of Plots Nos.1 and 2, was examined at Exh.51. This witness produced the sale deed Exh.53, by which he had purchased 200 sq.yards of land from Surat Municipal Corporation. No other witnesses were examined by the claimants. The opponents did not lead any oral or documentary evidence. The Reference Court, for the purpose of determination of the market value of the acquired lands, has placed reliance on the sale deed Exh.53, and determined compensation of the acquired lands at the rate of Rs.375 per sq.yard. The claimants, being lessee of the acquired lands, were given a share of 25% of the total amount of the compensation. The Reference Court awarded Rs.28,135/towards compensation for the super-structure. The Reference Court also extended the benefit under Section 23(2) of the Act, i.e. solatium at the rate of 30%, which has given rise to filing their respective appeals by the claimants as well as the Land Acquisition Officer.

7. The learned Assistant Government Pleader, Mr.

B.Y. Mankad, for the Land Acquisition Officer, and learned advocates M/s. Shirish Joshi and Baiju Joshi, for the claimants, have taken us through the entire record and proceedings of the appeal.

8. Learned AGP, Mr. Mankad, has vehemently submitted that the Reference Court was not justified in awarding compensation by apportioning the compensation at the ratio of 75:25 between the Government being the owner of the land and the claimants who were lessee of the lands. It is submitted that the Land Acquisition Officer had not awarded any amount of compensation in favour of the claimants towards the price of the land under acquisition. Therefore, the Reference Court ought not to have interfered with the offer of the Land Acquisition Officer. It is further contended by the learned AGP that when the land is separately valued, the super-structure will fetch the price as debris and the Reference Court had erred in assessing the compensation separately for the super-structure.

9. In our opinion, none of the contentions raised by the learned AGP deserves consideration. It is not in dispute that the claimants, being the lessee of the lands for 99 years, were interested in the acquired lands . The said lease was to expire on July 31, 1966. Notification under Section 4 of the Act was published on October 1, 1964, and, at that point of time, the lease was in existence. Therefore, it cannot be said that the claimants were not the persons interested as defined under the Act.

10. The submission of the learned AGP, Mr. Mankad, that no separate compensation can be paid for the super-structure since the compensation is awarded for the lands, does not deserve any consideration and requires to be rejected. In the case of Abdul Kuddus Mandal and others vs. State of Assam and another, reported in AIR 1999 Supreme Court 3403 [=(1999) 6 SCC 580], the Apex Court ruled that, when the land along with super-structure standing on it were acquired, compensation was required to be paid for the houses which were standing on that land. It is further ruled that the land could not have been acquired without houses standing thereon. In view of the pronouncement of the Supreme Court in Abdul Kuddus Mandal (supra), the claimants are entitled to compensation for the super-structure standing on the acquired land excluding the costs of demolition as held by the Reference Court.

11. The learned advocate for the claimants has placed

reliance on the decision of the Division Bench of this Court rendered in First Appeal No.202 of 1968 with Civil Application No.2217 of 1971, decided on 26/27-10-1971. The facts before the Division Bench in the abovereferred judgment were that the lands belonging to the claimants, who were lease holders of the lands, came to be acquired for the public purpose under the provisions of the Land Acquisition Act, 1894. The Division Bench in apportioning the compensation between the lessee and the lessor, had, by following various judgments of the Division Bench of this Court as well as the other decisions, had apportioned the amount of compensation between the lesser and the lessee at the ratio of 75:25. No judgment, contrary to the judgment referred to above, has been cited before us by the learned AGP. Therefore, we have no hesitation in holding that the claimants being lessee of the acquired lands are entitled to compensation as the persons interested in the acquired lands. The apportionment made by the Reference Court in the ratio of 75:25 between the lessor and the lessee is quite legal and just and does not require any interference.

12. With regard to determination of the market value of the acquired lands, the learned AGP has not been able to point out any evidence on the record to show that the compensation determined by the Reference Court for the acquired lands at the rate of Rs.375 per sq.yard was on a higher side. The Reference had committed no error in placing reliance on the sale deed Exh.53, which was in the near proximity of time and relating to the adjoining land in determining the market value of the acquired lands. The lands, which were sold under the sale deed Exh.53, were sold between the willing buyer and the willing purchaser, and it was a genuine sale deed. The price of the lands, which were subject matter of the sale deed Exh.53, works out to Rs.330 per sq.yard. Said lands were khadi land which was about 7 to 8 feet deep. The Reference Court was justified in adding Rs.45/- per sq.yard for the purpose of determining the market value of the lands under acquisition, which was even land and, thereby, arrived at Rs.375/- per sq.yard as the market price of the acquired lands. In our opinion, the determination of the market value of the acquired lands on the relevant date at the rate of Rs.375 per sq.yard is adequate and reasonable. Other benefit, i.e. solatium awarded in favour of the claimants at the rate of 30% is also just and proper. These were the only contentions raised by the learned counsel for the claimants and the learned AGP for the Land Acquisition Officer in these appeals.

13. As a result of foregoing discussion, we confirm the determination of market value of the acquired lands at the rate of Rs.375/- per sq.yard as on October 1, 1964. The apportionment at the ratio of 75%:25% between the lessor and the lessee made by the Reference Court also deserves to be confirmed as it is based on the settled legal principle. The compensation offered for the super-structure is also just and adequate and is hereby confirmed. The award of solatium at 30% also requires to be confirmed. First Appeal No.1411 of 1990 filed by the claimants and First Appeal No.4 of 1991 filed by the Land Acquisition Officer are dismissed with no order as to costs.

April 29, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)

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